

October 15, 2022

VIA FOIAONLINE.GOV

U.S. Environmental Protection Agency Headquarters, including but not limited to the Office of
the Administrator and the Office of Air and Radiation
U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency, Region 2
U.S. Environmental Protection Agency, Region 3
U.S. Environmental Protection Agency, Region 4
U.S. Environmental Protection Agency, Region 6

Re: Freedom of Information Act Request:

Dear FOIA Officers:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, as amended (“FOIA”).

REQUESTED RECORDS¹

Earthjustice requests the following records prepared, received, or obtained by the U.S. Environmental Protection Agency (“EPA”) during the period January 1, 2020 up through and including the date of your search for records. The request extends to all such records in the possession, custody, or control of the following offices:

U.S. Environmental Protection Agency Headquarters, including but not limited to the Office of
the Administrator and the Office of Air and Radiation
U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards
U.S. Environmental Protection Agency, Region 2
U.S. Environmental Protection Agency, Region 3
U.S. Environmental Protection Agency, Region 4
U.S. Environmental Protection Agency, Region 6

The records sought are: all records relating to, discussing, or referring to EPA’s investigation, understanding, evaluation, policies, communications, actions, possible regulation, and regulation of the mining of crypto-assets and cryptocurrency, and the following related topics:

- energy use associated with cryptocurrency mining;
- the environmental impacts of cryptocurrency mining;

¹ “Records” means information of any kind, including writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, e-mails, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described herein at any stage of development, whether proposed, draft, pending, interim, final or otherwise.

- power plant operations involving cryptocurrency mining;
- wellhead operations supporting cryptocurrency mining;
- records regarding the report by the White House Office of Science and Technology Policy entitled Climate and Energy Implications of Crypto-Assets in the United States, September 2022 (“OSTP Report”); and
- communications with the White House Office of Science and Technology Policy, regulated entities, state agencies, or other parties concerning all of the above topics.

As used herein, “crypto-assets” and “mining” have the same meaning as these terms have in the OSTP Report.

As used herein, “cryptocurrency” has the same meaning as “crypto-assets.”

This request includes any responsive communication that is or was on any system or device, computer, phone, smartphone, tablet, e-mail account, cloud, server or other communication system either personal or business. It applies to e-mail messages in any format concerning EPA activities or business from a personal or government mobile device.

We request the opportunity to confer with EPA about narrowing the request by agreeing on specific search terms and custodians before EPA performs its search.

EXEMPT RECORDS

Agencies are advised to “make discretionary disclosures of information” and refrain from withholding records “merely because [they] can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.”² If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- (1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- (2) State the exemption you deem to be applicable to each information request;
- (3) State with particularity the reason why such exemption is applicable to each information request;
- (4) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding;
- (5) If you do not use your discretion to release such complete and unredacted records: (a) examine each record to determine if reasonably segregable non-exempt information exists that may be released after redacting information deemed to be exempt; and, (b) provide us with a copy of each record with redactions of only the information that you have determined to be properly withheld.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or

² Memorandum from the Att’y General to Heads of Exec. Dep’ts & Agencies (Mar. 19, 2009), <https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf>.

format.”). Please provide all records in an electronic .pdf format that is text-searchable and OCR formatted. Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,”.pdf file.

RECORD DELIVERY

We appreciate a prompt determination on the requested records, and within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i). Please e-mail copies of the requested records to Charles McPhedran and Thom Cmar at the e-mail addresses below. Please deliver documents that are not available in an electronic format to the physical address below. Failure to comply within the statutory timeframe may result in our filing an action before the relevant U.S. District Court to ensure timely receipt of the requested materials.

Deliver electronic documents to both of these e-mail addresses:

Charles McPhedran

cmcphe@earthjustice.org

Thom Cmar

tcmar@earthjustice.org

Deliver other documents to:

Charles McPhedran

Earthjustice

1617 JFK Boulevard, Suite 2013-2021

Philadelphia, PA 19103

Please send documents on a rolling basis. EPA’s search for—or deliberations concerning—certain records should not delay the production of others that EPA has already retrieved and elected to produce. *See generally* 40 C.F.R. § 2.104 (describing response deadlines).

FEE WAIVER REQUEST

We respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l). Earthjustice is a nonprofit environmental organization that advocates for a healthy environment on behalf of community groups, health associations, and conservation groups throughout the country and at the national level.

Earthjustice is directly and vigorously engaged in responding to the environmental consequences of cryptocurrency, including by litigation, advocacy, and communications.

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” *U.S. Dep’t of Justice v. Reporters Comm. For Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA’s fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Requesters access to government records without the payment of fees. *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984) (fee waiver provision intended “to prevent government agencies from using high

fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars, and non-profit public interest groups.”).

As explained below, this FOIA request satisfies the factors listed in EPA’s governing regulations for waiver or reduction of fees, as well as the requirements for a fee waiver under the FOIA statute – that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii), *see also* 40 C.F.R. § 2.107(l).

1. The subject matter of the requested records specifically concerns identifiable “operations and activities of the government.”

The requested records relate to EPA’s investigation, understanding, evaluation, policies, communications, actions, possible regulation, and regulation of cryptocurrency. These activities and policies of EPA are “identifiable operations or activities of the government.”

2. The disclosure of the requested documents would be meaningfully informative and “likely to contribute to an understanding of Federal government operations or activities.”

The requested records concern EPA’s investigation, understanding, evaluation, policies, communications, actions, possible regulation, and regulation of cryptocurrency. These policies will have a significant impact on pollution impacts from cryptocurrency, regulation of which is at the heart of EPA’s statutory duties. The release of requested documents will contribute to an understanding of EPA’s operations and activities regarding cryptocurrency.

Once the requested documents are made available, Earthjustice will analyze them and present its findings to the public in a manner that will meaningfully enhance the public’s understanding of EPA’s activities. The documents requested will thus be “meaningfully informative” and “likely to contribute” to an understanding of EPA’s operations.

3. The disclosure would contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons.

Earthjustice has experience and expertise in the subject area of this request. Further, Earthjustice has decades of experience in working throughout the nation to strengthen EPA’s implementation of clean air and other pollution reduction programs related to this request.

Earthjustice has mechanisms in place to share information obtained from the requested records with the general public and other interested organizations. It is well-positioned to share the requested information with interested audiences. Earthjustice’s e-mail list includes about 2 million people, its website receives approximately 522,000 page views per month, and its quarterly print magazine has a circulation of approximately 98,000. Earthjustice employs or retains communications professionals who can disseminate newsworthy information obtained

from this request to the media. Thus, Earthjustice has the knowledge and ability to disseminate the information requested in a manner that contributes to the understanding of the public at large.

4. The disclosure would contribute “significantly” to public understanding of government operations or activities.

The records requested would shed light on a matter of considerable public concern: the expanding cryptocurrency industry, which now uses as much energy as some entire nations, and its impact on our environment. EPA stands in a unique position to address this threat, and Earthjustice (as noted above) has the ability and intent to use the records it receives to contribute to public understanding of EPA’s operations regarding cryptocurrency. Thus, the disclosure of these records will contribute significant to this understanding.

5. The requester has no commercial interest that would be furthered by the requested disclosure.³

Earthjustice is a nonprofit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Code, and as such has no commercial interest. Thus, Earthjustice has no intention to use records received from EPA in any manner that “furthers a commercial, trade, or profit interest”. The requested records will be used for the furtherance of Earthjustice’s mission to inform the public on matters of vital importance to the environment and public health.

For all of the foregoing reasons, Requesters respectfully requests that EPA waive processing and copying fees pursuant to 5 U.S.C. § 552(a)(4)(A) because the public will be the primary beneficiary of this requested information. In the event that your agency denies a fee waiver, please send a written explanation for the denial. Please do not incur expenses beyond \$250 without first contacting our office for authorization.

Thank you for your assistance with this request. If you have any questions, please contact me at cmcphe dran@earthjustice.org or (215) 206-0352.

Sincerely,

s/ Charles McPhedran

Charles McPhedran
Earthjustice

³ Because Requesters have no commercial interest, they also satisfies the final factor for a fee waiver, which compares the magnitude of an identified commercial interest to the public interest in disclosure.